

February 9, 2015

Rep. Art Wittich, Chair Human Services Committee
Montana House of Representatives
PO Box 200400
Helena, MT 59620-0400

Chairman Wittich & Human Services Committee Members,

Last Spring I had the privilege of addressing the 12-Day Milk Rule subcommittee of the Economic Affairs Interim Committee on behalf of my employer, Cargill, in support of the current 12-day Sell-by rule. Subsequently I also offered my personal comments as a long-time resident of Montana and as a milk consumer. There are so many important issues that our legislature and citizenry should be investing in, I find it terribly disappointing that we continue to spend so much time and energy in this particular debate over a milk sell-by dating system that has been working well for many years and continues to perform exceptionally well.

To be clear, I personally support the rule as it currently exists.

During last year's hearing, Senator Facey asked Tom Bears of Core Mark International the question, "is the system broken now?" While Mr. Bears felt that consumers "have no clue of any information of what they are buying" and he didn't think "the retailer has the knowledge to tell them," I believe that you, as representatives of voters throughout the state of Montana, are keenly aware of the issues your constituents feel are "broken" in our government. Further, I would hazard a guess that none of you have received complaints from the general public that they don't understand what a "sell by" date means, aside from those prompted by Core Mark's litigation. The very thought that the milk consuming public is paralyzed by a lack of understanding the date code on the top of a milk carton that has been in place for 34 years is ludicrous. Without government intervention, people can figure these things out and determine how to transport and store perishable foods to meet their needs. And I don't think I have ever met a person who would automatically throw away an edible product simple because the sell by, use by, or best by date has passed...the average person will look at, smell and/or taste the product to make their own determination of its suitability for consumption. As proposed, HB 399 will break a system that works well and truly create confusion in the marketplace. By allowing milk processors to choose their own dating system, it will be virtually impossible for the milk consuming public to have any idea of the freshness of the dairy products they purchase. The ultimate goal of milk processing companies is to make a profit. It would not be unreasonable to believe that they would push sell-by dates to the extreme in order to market more product.

Previous comments in this debate were also made around determining what milk dating rules are in effect in neighboring states, and concerns about meeting reciprocity agreements. From what I have read in the record of this long battle, both Judge Sullivan and the court agree that Montana's 12-day rule is not in violation of interstate commerce regulations. Further, no neighboring states have

challenged Montana based upon not living up to reciprocity agreements. I think this line of questioning is really a veiled scare tactic to make people believe something is wrong, when that is not the case. And what impact should the rules of neighboring states have on the rules that Montana decides to implement? Idaho has close to 600,000 dairy cows and Washington has about 260,000 cows, while Montana has around 12,000 cows. There are two Idaho residents for every dairy cow in that state, 26.5 Washingtonians for every dairy cow there, and 83.3 Montanans for each dairy cow in our state. Looking at this from a geographical distribution standpoint is even more telling, with one cow per 0.14 square miles in Idaho, one cow per 0.27 square miles of Washington, and one cow per 12.25 square miles in Montana. With such vast differences, a cookie-cutter approach to rule making is not logical. At the same time, no state has allowed milk processors to self-police their own dating system. I realize that we Montanans like to be pioneers, but I don't think this is the place to exhibit such pioneering spirit.

If you cut through all the rhetoric and innuendo of this battle, our existing 12-day Sell-by rule is all about ensuring consumers that they are spending their hard earned money on a fresh and wholesome product. Milk producers, processors and retailers are held to high standards regarding the temperature and conditions in which dairy products are stored and transported, and under these "controlled" conditions milk will not rapidly spoil. Once milk is purchased, the shelf life of a carton of milk becomes less predictable because different people transport, handle and store their milk differently. In his concluding remarks at last spring's subcommittee hearing, Representative Greg Hertz stated that "the retailer never wants to sell a bad product to a consumer." I absolutely agree with this, and then the challenge becomes how we can best ensure that this happens. Let's compare two different scenarios; 1) using our current 12-day *sell-by* rule, and 2) implementation of processor-defined *use-by* rules. Under scenario #1, a retailer will never take delivery of milk that has been pasteurized and bottled for more than 11 days. With scenario #2, the retailer may not have any indication of the age of the milk on the shelves. So which product will have the longest shelf life in the consumer's refrigerator every time it is purchased? The answer is obvious that the 12-day rule does more to provide that assurance of freshness to the end-user.

In the few minutes this issue was addressed in the full Economic Affairs committee meeting last year, Senator Arntzen commented that the legislature doesn't want to be picking winners and losers in this debate. HB 399 will decidedly choose milk processors to be winners and the milk consuming public to be losers. Any decisions or changes around milk sell-by dating need to focus on how Montana businesses and consumers win. That is the job of the legislature and the duty of our citizens. If the solutions which yield the best "win" for Montanans also happen to benefit an out-of-state entity, that is great. But, kowtowing to the out-of-state business behind this effort that does not have the best interest of Montana's citizenry in mind would be paramount to dereliction of duty. They [Core Mark International] have tried to make the argument that Montanans' will pay less for milk if we strike the 12-day rule, yet the pricing information shared in previous testimony proves that this is a false argument. San Francisco headquartered Core Mark International has been in business since 1888, and is a publically traded entity. They have a solid business model, and very good growth in profits over the last ten years. As it should be, a primary obligation of Core Mark is to provide a return to stockholders. It may be wise to invest in this company, but I doubt anyone can find anything in their company strategy

or vision that makes providing cheap milk to Montana residents a business priority. They want more products to fill space in their trucks so their distribution model is more efficient. As they become more efficient, they can either sell products at a lower price, or increase their profits. Assuming they can be competitive in the market, I don't think there is much doubt which direction they would take in making that decision.

The 12-day Sell-by rule is not broken. It has worked for milk consumers in Montana for 34 years and does not need to be changed.

Thank you.

A handwritten signature in black ink, appearing to read 'Ken Bryan', with a stylized, flowing script.

Ken Bryan
PO Box 8
Roundup, MT 59072